

Psychoanalysis as a Profession: The New York experience

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As you all know, the immediate occasion for this panel is the passage of Article 163 in New York. This law created four new mental health professions, among them psychoanalysis. This law is not the first such law for psychoanalysts- it is actually the third, the previous laws being certification laws passed in Vermont (in 1993) and New Jersey (in 2000). All three state laws were promoted by a group that calls itself the National Association for the Advancement of Psychoanalysis, or NAAP. The NAAP laws represent a serious challenge to psychoanalysis. In this paper, I will sketch out a framework for thinking about this challenge and present my ideas about how we can best meet it.

I will begin by recapping the highlights of the New York law and reviewing how it came about. In brief, Article 163 establishes psychoanalysis as an autonomous profession, with a protected title ("licensed psychoanalyst") for the exclusive use of licensees. The new profession is totally independent. Licensure in psychoanalysis requires no prior training in any mental health profession. The educational criteria for licensure are egregiously low. Under the law, individuals who have never had academic training in a mental health discipline, and who have never had "training analysis" or conducted a single "control case" (as we define these terms) will be entitled to hold themselves out to the public as "licensed psychoanalysts."

Although the law does not affect licensed social workers, psychologists, physicians or nurses - we are all permitted to practice psychoanalysis as "exempt" professionals -it does prohibit us from calling ourselves "licensed psychoanalysts" unless we obtain the license. And it virtually guarantees that none of us will do so because, according to the law, all "licensed psychoanalysts" must obtain medical oversight when treating "severe" conditions (such as anxiety or obsessive compulsive disorder). This requirement applies to all licensees, regardless of their prior training.

An additional complication is that only "licensed psychoanalysts" may serve on the state regulatory board that recommends regulations and oversees professional discipline. Put simply, Article 163 establishes psychoanalysis as an autonomous profession and ensures that we are not in it and have no influence over it.

How did this happen?

In short, we psychoanalysts didn't protect ourselves or our title. The state associations of social work and psychology, two of the three primary disciplines which claim psychoanalysis as a "subspecialty", did not do oppose Article 163 because each was engaged in its own respective legislative battle to promote "scope of practice" bills which had become bundled with Article 163. Neither group could oppose Article 163 without damaging its own cause. Each state association thus refrained from opposing the NAAP bill, and each persuaded their national organizations (Division 39 and NMCOP) to do the same. As a result, the Psychoanalytic Consortium, the national umbrella organization that was formed for the purpose of opposing NAAP's agenda (of which Division 39 and NMCOP are two of the four component groups), was unable to act in accordance with its mission. This paralysis cannot be attributed to any obvious failure of judgment or disregard for psychoanalysis on anyone's part. The failure, as I see it, reflects a historically determined structural weakness in the organization of psychoanalysis as a subspecialty of the three mental health profession.

This organization has caused analysts in each discipline to be, to one degree or another, divided from analysts in the other two disciplines, and divided in their interests between psychoanalysis and their primary disciplines. As a result, we - the psychoanalysts in each of the three disciplines - did not develop a strong sense of professional community or reliable habits of collective action. We did not develop a sense of ourselves as a profession with our own unique set of shared interests. And of course, insofar as we were all licensed and identified with our primary disciplines, we saw no reason for additional licenses to practice psychoanalysis, nor did think to protect the title.

This set the stage for the ensuing history.

Because psychoanalytic titles and practice were unregulated, anyone in states like New York could hang out a shingle and call himself or herself a psychoanalyst. Anyone could start a psychoanalytic institute, set up shop as a training analyst, and exploit an unlimited market for students. And in New York, many did just that. There are now at least 75 psychoanalytic institutes in New York, some of which are far outside the theoretical mainstream, many of which have more or less open admissions policies, and most of which have very low standards for training and certification.

Under such conditions, the emergence of an organization like NAAP was inevitable because these marginal groups were bound to face common problems that would require a collective solution. In 1972, twenty of these marginal institutes banded together to form NAAP, a unified professional association to promote their common cause. Virtually all of these institutes had two major problems in common: First, all were "outsiders" with little or no standing in the psychoanalytic community. Second, a very large percentage of their members were

unlicensed. NAAP thus adopted a plan to enhance their status and legitimacy as psychoanalysts and to secure licenses for their unlicensed members.

NAAP, which was not obstructed by the divisions that faced psychoanalysts in the three mental health professions, was able to advance its ends by organizing itself on the model of a profession. It established minimum standards for training, created an agency to accredit its institutes and certify its members, developed an ethical code and procedures to enforce it, developed "scientific" journals, ran conferences, and devoted many hundreds of thousands of dollars to public relations, advocacy, and lobbying for the licensing laws. Over the years, the graduates of NAAP institutes became a more and more sizable constituency, providing financial and political support to its organizational goals. While NAAP failed in its efforts to become the national accrediting body - a result of the massive opposition this national goal aroused - in 1993, it did succeed in attaining certification in Vermont, where there are almost no analysts, in 2000 it secured passage of a similar law in New Jersey, where there are far more, and in 2003, it succeeded in passing Article 163 in New York, where there are more psychoanalysts than in any other state in the nation.

How shall we understand these developments? What danger does NAAP pose to psychoanalysis and how can we meet this danger? I have found it valuable to study this situation through a perspective drawn from the sociology of the professions. In the remainder of my time, I will outline the basic elements of this perspective and apply them to our situation.

Psychoanalysis as a profession

Although the word "profession" is used very freely in common discourse, I use this term in the sociological sense to characterize an occupational group with specific features, namely: the possession of specialized skills based upon an esoteric knowledge base; one or more professional associations that can direct the activities of the profession; high standards for training, competence and ethical conduct along with institutionalized mechanisms to enforce them; and a high measure of a social authority within the wider community, typically formalized by licensing laws and a protected title.

The sine qua non for a profession is a specialized skill based upon an esoteric knowledge base. Because professional knowledge is esoteric, requiring a great deal of study, professional knowledge is inevitably a mystery to the laity. As a result, a prospective client cannot measure a practitioner's competence, assess the suitability of a proposed service, or even judge the skill with which it has been performed. Professions are thus occupations in which the prevailing business norm of 'caveat emptor' ('let the buyer beware') cannot apply. This is a problem for both the practitioner and the prospective client: The practitioner cannot market his services without having the public trust, and the public cannot utilize the practitioner's skill without the confidence that it is safe to do so. Both the public and the practitioner thus need an institutional

structure that will promote the public's trust. Professions provide this structure by negotiating a set of collective arrangements between itself and the containing society.

These arrangements constitute a "corporate bargain" between the occupational group and the containing community. The profession fulfills its part of the collective bargain by organizing itself to guarantee the competence and conduct of its members. It does so by establishing high standards for training and practice, accrediting and monitoring training programs, and by certifying its qualified members with recognizable credentials so that the public can identify them. The containing community reciprocates by granting the profession a high measure of respect and status, as well as a legal monopoly through licensing laws. This "corporate bargain" is the essence of professional status. A profession is thus a collective enterprise and the fate of its members is a collective fate. Professionals can only thrive when their profession thrives, and a profession can only thrive if it protects and promotes its "corporate bargain" with the public.

And herein lies the threat posed by the NAAP laws.

NAAP licensing laws and psychoanalysis

The NAAP laws undermine our capacity to establish a relationship of trust with the lay public because they confer our professional title upon another occupational group. If we - the established practitioners of psychoanalysis - cannot identify ourselves to the public because another group bears our name, how can we negotiate or protect any relationship with the public?

This situation, which is so damaging to us, is highly advantageous to the new "licensed psychoanalysts." By virtue of their possession of our title, they partake in the fruits of our work. They inherit the status and prestige of psychoanalysis and can even claim expertise by reference to our growing body of outcome studies. The newly licensed psychoanalysts will surely benefit from our reputation, but how will we be affected by the reputations they establish? We have been the somewhat hapless victims in what I think is an unprecedented case of professional "identity theft," and our relationship with the public will be subject to continual violation unless we establish a differentiated identity and forge our own "corporate bargain" with the public.

We can do this if we learn to think and act as a profession. Psychoanalysts in each of the mental health professions will need to rethink their relationships to each other and to their primary disciplines. In my view, we cannot depend upon our primary disciplines to protect psychoanalysis because the interests of psychoanalysis do not always coincide with the interests of our disciplines. We need to see to our own interests, and I think we can best do so if we organize ourselves as a profession, representing the community of psychoanalysts. This is no simple task, it will entail grappling with difficult boundary issues, and

related problems, there are -at least in my understanding - no good alternatives.

I am not advocating that we abandon our primary disciplines or any of our respective professional associations. We needn't abandon one set of relationships in order to embrace another. Neither am I suggesting that we abandon the principle that all or most psychoanalysts be trained in one of the primary mental health professions. We can set whatever standards we choose, as long as they are reasonable, that is, as long as they are sufficiently inclusive to define a viable professional community: a community that is large enough, cohesive enough, and competent enough to forge its own "corporate bargain" with the public.

Any effort to form a profession of psychoanalysts will probably require the following minimum steps, although probably not in this order:

- 1) At some point, we will probably need to establish a single professional association or confederation of associations to promote our purposes on a national level. In order to insure that we are not obstructed in our efforts by avoidable divisions of interest, this organization should be an organization composed of psychoanalysts, or of organizations that are themselves composed of psychoanalysts. It should also be interdisciplinary so that the competing commitments of any constituency do not supercede the common interest in psychoanalysis.
- 2) We will need a single credential that we can all employ to identify ourselves to the public. It is not sufficient for each profession to mint its own credentials. There are already a plethora of credentials, few of which are recognized by anyone but their holders. What we do need is a single credential that we can collectively market as a guarantee of its holder's training and competence.
- 3) We need to pursue a state-by-state campaign to promote licensing laws to regulate the practice of psychoanalysis. There is no protection for psychoanalysis unless we have an exclusive license and can govern ourselves as a profession. If we do not proactively pursue our own licensing agenda, the remaining 47 states will remain vulnerable.
- 4) If "all politics are local," this is especially true in regard to professional licensing. If we are to promote the licensing laws we want and oppose the laws we don't want, we will need to form our own state psychoanalytic associations to conduct these efforts. As we learned in New York, we cannot rely on state associations for social work, psychology, or psychiatry to protect our interests as psychoanalysts.

My belief in the importance of state psychoanalytic associations has been shaped by the experience in New York. Although the state social work and psychology

groups failed to act in defense of psychoanalysis, their failure created a vacuum that was ultimately filled by a coalition of primarily local psychoanalytic associations. This coalition took shape spontaneously, after the law was passed, as a variety of psychoanalytic groups began lobbying for the promulgation of regulations that would minimize the adverse effects of the law. Although most of us came late to the game, and we succeeded only modestly in our ambitions, the experience of working together was unprecedented and gave rise to new patterns of cooperation among participating groups. This proved to be very valuable. Following the adoption of a very disappointing set of regulations by the state, when we had only 120 days to file a legal challenge, we were able to draw on our experience of working together to form the New York State Psychoanalytic Confederation (NYSPAC), get ourselves incorporated, raise the funds we needed, and file a lawsuit - all before the 120 day deadline.

The structure of our organization is simple. We are a confederation of seven major psychoanalytic societies located in our state. Membership in the confederation is open to any organization that conforms to ACPE standards and is willing to pay its share of our costs. Our mission is to bring the licensing criteria into alignment with ACPE standards. We are now engaged in a legal action to challenge the current regulations, hope to have the services of our own lobbyist in Albany.

A similar confederation has begun to come together in New Jersey, where local analysts have been engaged in a similar struggle, and another may be taking shape in California, where CIPS has been trying to develop a coalition to promote our own licensing law for psychoanalysis.

I realize that my proposals may not be congenial to many social workers and psychologists, especially to those who are not psychoanalysts themselves. I would like to close by saying that any program of action that promotes the standing and status of psychoanalysis as a profession, as I have described this here, will also promote psychoanalysis as a theory and as an orientation to practice, and will therefore advance the interests of all practitioners who adopt a psychoanalytic approach to their work.